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Attorneys for Defendants

BLOOMIN' BRANDS, INC.; OSI RESTAURANT PARTNERS, LLC; OUTBACK STEAKHOUSE OF FLORIDA, LLC; OS RESTAURANT SERVICES, LLC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BROOKE CARDOZA, CODY C. HANCOCK,  
MICHAEL YENDES, JEFFERY BROWN, KEVIN  
CONNELLEY, TREVOR TULLIS, DENISE  
GOODLIN, JOSEPH VERRENGIA, AMY  
WOMACK, VALERIE GARDNER, ALEX NESBITT,  
DANIEL GEIGER, RACHEL TALASKO, and  
WESLEY MILES, Individually and On Behalf of All  
Others Similarly Situated,

Plaintiffs,

v.

BLOOMIN' BRANDS, INC.; OSI RESTAURANT  
PARTNERS, LLC; OUTBACK STEAKHOUSE OF  
FLORIDA, LLC; OS RESTAURANT SERVICES,  
LLC, And DOES 5 through 100, Inclusive,

Defendants.

CASE NO. 2:13-cv-01820-JAD-(NJK)

**DEFENDANTS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR (1)  
CONDITIONAL CERTIFICATION OF  
COLLECTIVE ACTION; (2)  
APPROVAL OF CLASS NOTICE; (3)  
APPOINTMENT OF INTERIM CLASS  
COUNSEL; AND (4) RELATED  
RELIEF**

Action Filed: October 4, 2013

## REQUEST FOR JUDICIAL NOTICE

In support of their Opposition to Plaintiffs' Motion for (1) Conditional Certification of Collective Action; (2) Approval of Class Notice; (3) Appointment of Interim Class Counsel; and (4) Related Relief (hereafter "Defendants' Opposition to Plaintiffs' Motion for Conditional Certification of Collective Action") and pursuant to Rule 201 of the Federal Rules of Evidence, Defendants Bloomin' Brands, Inc.; OSI Restaurant Partners, LLC; Outback Steakhouse of Florida, LLC; OS Restaurant Services, LLC (collectively, the "Defendants") respectfully request that this Court take judicial notice of the following websites and public statements contained therein made by Plaintiffs' counsel to advertise this lawsuit:

1. A January 2, 2014, status update on Facebook advertising the filing of the First Amended Complaint, informing the public that the operative complaint now includes state-law class action claims, and encouraging employees to call Plaintiffs' counsel with their wage and hour complaints against Outback Steakhouse. *See* Wolf Rifkin Shapiro Schulman & Rabkin – Las Vegas Office, Wolf Rifkin Shapiro Schulman & Rabkin Files Amended Complaint Against Outback Steakhouse, Adding State-Law Class Action Claims, FACEBOOK (Jan. 2, 2014), <https://www.facebook.com/pages/Wolf-Rifkin-Shapiro-Schulman-Rabkin-Las-Vegas-Office/190497391135073?ref=stream> (a true and correct copy of which is attached to the supporting Declaration of Jesse A. Cripps);
2. An October 10, 2013 status update on Facebook advertising the filing of the original complaint against the Defendants and directing viewers to the outbacklawsuit.com website by adding a link thereto. *See* Wolf Rifkin Shapiro Schulman & Rabkin – Las Vegas Office, Outback Steakhouse Faces Federal Wage-And-Hour Lawsuit Alleging Failure to Pay Employees, FACEBOOK (Oct. 10, 2013), <https://www.facebook.com/pages/Wolf-Rifkin-Shapiro-Schulman-Rabkin-Las-Vegas-Office/190497391135073?ref=stream> (a true and correct copy of which is attached to the supporting Declaration of Jesse A. Cripps);
3. A press release from Plaintiffs' counsel informing the public of the filing of this lawsuit against Defendants, directing viewers to the outbacklawsuit.com website and the Plaintiffs' counsel's firm website, and encouraging employees to call Plaintiffs' counsel with their wage

and hour complaints against Outback Steakhouse. *See* PRNewswire, Outback Steakhouse Faces Federal Wage-And-Hour Lawsuit Alleging Failure To Pay Employees, According To WRSS&R, (Oct. 10, 2013) , <http://www.prnewswire.com/news-releases/outback-steakhouse-faces-federal-wage-and-hour-lawsuit-alleging-failure-to-pay-employees-according-to-wrssr-226767241.html> (a true and correct copy of which is attached to the supporting Declaration of Jesse A. Cripps);

4. An article by Plaintiffs' counsel on a web site named outbacklawsuit.com—undoubtedly created specifically for this litigation—describing Plaintiffs' allegations and encouraging viewers to call Plaintiffs' counsel to determine whether they are eligible to join this lawsuit. *See* Wolf Rifkin Shapiro Shulman & Rabkin LLP, *Outback Steakhouse Faces Federal Wage-And-Hour Lawsuit Alleging Failure to Pay Employees*, [www.outbacklawsuit.com](http://www.outbacklawsuit.com) (last visited on August 27, 2014) (a true and correct copy of which is attached to the supporting Declaration of Jesse A. Cripps);<sup>1</sup>
5. An news article in which Plaintiffs' counsel Bradley Schrager, on or around October 7, 2013, in a publicly-reported interview with Sunbelt Food Service admitted that the allegations in this case about “Outback Time” are not based on any written policy: “‘Outback Time’ is probably a practice that is left unspoken” and “I don’t think (Outback Time is) the sort of thing you necessarily put on an employee handbook.” *See* Heather Blount, *Lawsuit Calls Outback Labor Policies ‘Just Wrong’*, SUNBELT FS (Oct. 7, 2013) <http://www.sunbeltfoodservice.com/2013/10/07/lawsuit-calls-outback-labor-policies-just-wrong/> (a true and correct copy of which is attached to the supporting Declaration of Jesse A. Cripps).

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<sup>1</sup> As Defendants previously informed the Court, Plaintiffs removed a series of misleading statements from their website after these statements were brought to Plaintiffs' attention on February 20, 2014. *See* ECF No. 100 at 5; *see also* ECF No. 100-2.

1 The relevancy of the first four statements and/or websites is discussed in Defendants’  
 2 Opposition to Plaintiffs’ Motion for Conditional Certification of Collective Action, Summary of  
 3 Relevant Facts, section “I. The Conflicting Declarations of Sara Post.”

4 The statements described in item number 5 above are directly relevant to Defendants’  
 5 Opposition to Plaintiffs’ Motion for Conditional Certification of Collective Action, and underscores  
 6 the fact that Plaintiffs do not purport to rely on any written corporate policy or directive. By holding  
 7 out Plaintiffs’ claims as based on “unspoken” practices, it is clear that Plaintiffs have not and cannot  
 8 plausibly show that all restaurant managers and decision-makers were uniformly and systematically  
 9 operating under the same written policy.

10 The websites and the statements contained therein that are the subject of this request for  
 11 judicial notice satisfy the criteria set out for judicial notice pursuant to Federal Rule of Evidence  
 12 201(b)(2). The court may take judicial notice of the undisputed statements made by Plaintiffs’  
 13 counsel on these websites because they are being introduced to show the information Plaintiffs’  
 14 counsel put into the public realm, rather than for the underlying truth of that information. *Von Saher*  
 15 *v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (“[c]ourts may take  
 16 judicial notice of publications introduced to ‘indicate what was in the public realm at the time, not  
 17 whether the contents of those articles were in fact true’”) (citation omitted). *See also Matthews v.*  
 18 *Nat’l Football League Mgmt. Council*, 688 F.3d 1107, 1113 (9th Cir. 2012) (taking judicial notice of  
 19 statistics available on the NFL’s website); *O’Toole v. Nothrop Grumman*, 499 F.3d 1218, 1225 (10th  
 20 Cir. 2007) (“It is not uncommon for courts to take judicial notice of factual information found on the  
 21 world wide web”); *U.S. v. Kane*, No. 2:13-CR-250-JAD-VCF, 2013 WL 5797619, at \*11 (D. Nev.  
 22 Oct. 28, 2013) (taking judicial notice of the fact that defendant held itself out as a particular  
 23 organization on its website). These websites are reliable because they were created and maintained  
 24 by Plaintiffs’ counsel themselves, who cannot reasonably deny information that they have posted on  
 25 their own websites. A court shall “take judicial notice if a party requests it and the court is supplied  
 26 with the necessary information.” Fed. R. Evid. 201(c)(2).

27 For the foregoing reasons, Defendants respectfully request that, when considering their  
 28 Opposition to Plaintiffs’ Motion for Conditional Certification of Collective Action, this Court take

1 judicial notice of the public statements Plaintiffs' counsel made in the websites referenced herein and  
2 attached hereto.

3  
4 Dated: August 29, 2014

Respectfully submitted,

5 GIBSON, DUNN & CRUTCHER LLP

6 By: /s/ Jesse A. Cripps  
7 Jesse A. Cripps

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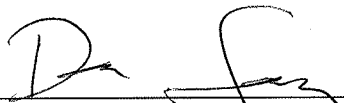
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24 Partners, LLC; Outback Steakhouse of Florida, LLC;  
25 OS Restaurant Services, LLC  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of August, 2014, a true and correct copy of  
**DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR (1) CONDITIONAL CERTIFICATION OF COLLECTIVE ACTION; (2) APPROVAL OF CLASS NOTICE; (3) APPOINTMENT OF INTERIM CLASS COUNSEL; AND (4) RELATED RELIEF**  
was served via United States District Court CM/ECF system on all parties or persons requiring notice.

By:

  
Daisy Sanchez, an Employee of  
GIBSON, DUNN & CRUTCHER LLP